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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,302	03/15/2001	Samuel F. Liprie	INE-0044-C1	9547

23413 7590 08/07/2002

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EXAMINER

KEITH, JACK W

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 08/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/681,302

Applicant(s)
Liprie

Examiner
Jack Keith

Art Unit
3641



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 1, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) 3 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-18, and 20-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/1/2002 have been fully considered but they are not persuasive.

The 35 U.S.C. 112, second paragraph rejection section 4.a of Paper no. 9 (claims 1, 2, 4-18 and 20-32) is herein incorporated by reference. Again the phrase "when bent" (i.e., future event) is not a positive structural limitations and in this sense fails to comply with the requirements of the statute in failing to distinctly claim the actual invention. Note In re Collier, 158 USPQ 266.

The 35 U.S.C. 103 rejections (sections 6 and 7) of Paper no. 9 are herein incorporated by reference.

Applicant argues that the examiner has not considered the claim limitation a "a flexible backbone wire having a proximal end, said proximal end of said wire being disposed in said housing tube, and further wherein the proximal end of said backbone wire is rounded".

The examiner disagrees for the reasons set forth in Paper no. 9.

Applicant argues that Liprie ('781) requires the backbone wire material to be made of an extremely high tensile strength material and that such material would be highly resistant to the bulbing as set forth by the examiner in the rejection.

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The backbone wire of Liprie ('781) is made of stainless steel of the same composition of that of the housing tube. As set forth in the rejection of Paper no. 9 *stainless steel* or *tantalum* are material equivalents for Nitinol® this is evident by Nariciso. Nariciso (column 3, lines 35-40) teaches that deflecting wires can be fabricated from metals having tensile strength and memory to deflect and return to their original position such as Nitinol®, *stainless steel* or *tantalum*. Clearly, the Nitinol® material set forth by applicant as his backbone wire is equivalent to that of stainless steel or tantalum. As is such the backbone wire of Liprie ('781) is capable of being bulbed by crimping, be it Nitinol®, *stainless steel* or *tantalum*. Note that tantalum is also set forth as a preferable material for the housing tube in Liprie ('781). Accordingly, modification of the Liprie ('781) backbone wire to be Nitinol® is in no than the use of conventionally known material equivalents within the source wire art.

Applicant argues that Liprie ('781) further cites that the final configuration requires that the backbone wire, radioactive core and plug should be closely abutting. In fact they [backbone wire, radioactive core and plug] are so close that any air that might remain between them is expelled.

The examiner agrees that while air is expelled such does not mean that voids are not left within the assembly. Removal of air does not mean voidless. Further note the air removal of Liprie ('781) takes place on the housing tube end not between the backbone wire and the radioactive core.

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Additionally it appears that voids are known to exist within the assembly of Liprie ('781). This is evident by the next paragraph wherein an alternative silver solder is utilized to fill these voids. Again as set forth in the rejection of Paper no. 9 crimping the backbone wire/source wire would indeed cause a deformation of the backbone wire material. Depending on the crimping force a bulb could occur on the end of the backbone wire making it appear rounded. Clearly, if no deformation occurred in the backbone wire assembly of Liprie ('781) then no solder to fill the voids would be needed; however, this is not the case.

Applicant argues that the teachings of Ishibe are not applicable to Liprie ('781) citing the close fit relationship of the backbone wire, radioactive core and plug.

The examiner for the reasons set forth above disagrees. Clearly, the teachings of Ishibe are applicable to Liprie ('781).

Note that from applicant's figures 1-3 it can be said that there exists a tight fit between the backbone wire and the radioactive core.

Conclusion

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Keith whose telephone number is (703) 306-5752. The examiner can normally be reached on Monday through Friday from 7:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

jwk

August 5, 2002


MICHAEL CARONE
SUPERVISORY PATENT EXAMINER